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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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invasion of personal privacy

File: EAC-01-258-56119 Office: Vermont Service Center Date:

FEB 28 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Myra L. Rosenberg
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, an importer and wholesaler of hair products, seeks authorization to employ the beneficiary temporarily in the United States as its product designer. The director determined that the petitioner had not established that the beneficiary has been employed abroad or would be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel rebuts the director's findings.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services performed.

The United States petitioner states that it was established in 2000 and is a subsidiary of Main Company, Ltd., located in Seoul, Korea. The petitioner seeks to employ the beneficiary temporarily for a period of three years at an annual salary of \$30,000.00.

The issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a capacity involving specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

8 C.F.R. 214.2(l)(1)(ii)(D) states:

Specialized Knowledge means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In describing the beneficiary's duties abroad, the petitioner stated, in pertinent part, that:

Currently, in charge of our product design in our parent office, [the beneficiary] is uniquely qualified to serve as Product Designer in our (United States) office. She has an associate degree in industrial engineering and has about five years' experience in product design and display. She has worked for more than one year in the parent office, possessing specialized knowledge of our hair products and procedures.

In describing the beneficiary's proposed duties in the United States, the petitioner stated, in pertinent part, that:

We now need the services of [the beneficiary] in order to facilitate review of our product lines and development of new product lines geared to the U.S. market.

In response to a Service request for additional evidence, dated October 4, 2001, counsel responded to the questions regarding the beneficiary's employment qualifications. In addressing those qualifications, counsel provided, in pertinent part, the following:

Q) Describe a typical workweek for the beneficiary.

A) The regular work will start at 9 a.m. and end at 5 p.m., M-F. A typical workweek will consist of the following work schedule:

M...Visit department stores and retail stores for market and product survey

Tues...Provide customer support by responding to customer's inquiry concerning our products and

maintenance of our hair products; may visit customer stores to assist their display of our products.

W & Thurs...Engage in new product development and designs; prepare for beauty trade shows in the U.S.

F...Business meeting with president and other staff members; provide training on our product features to our sales persons.

Q) Please identify the manner in which beneficiary has gained specialized knowledge.

A) Through on-the-job training and taking a beauty course. (see exhibit A)

-On-the-job training course...six months
-minimum time required to train...one year

Q) [Describe the] beneficiary's special knowledge and how it will benefit the company.

A) [The] beneficiary has special knowledge because she is familiar with some 150 different hair products of our company [and has] intimate knowledge of our product design and manufacturing process, as well as expert knowledge on maintenance of our products.

It is vitally important to the success of Petitioner's business expansion in the U.S. that we bring the beneficiary here so that she can assist our sales persons and customers with product and maintenance information, as well as to develop new product designs for American customers. We also need her help in organizing our product displays and answering buyers questions at various trade fairs.

The petitioner submitted a photocopy of a "Beauty Academy" graduation certificate bearing the beneficiary's name and an organizational chart, which reflected that the United States entity had four employees, a president, a sales manager, and two sales persons. The chart indicated two vacant positions that reported to the president, a general manager and a product designer.

On appeal, counsel rebuts the director's findings stating that the Service's interpretation of the regulations is too stringent and that the petitioner is in need of the services of the beneficiary in order to grow. Counsel submits a product catalogue and photocopies of various related equipment.

Upon review, the record does not establish that the beneficiary has any uniquely advanced or special knowledge of the petitioning organizations products or their application in the United States market as claimed. The beneficiary's knowledge of the foreign entities operations does not automatically constitute special or advanced knowledge. The beneficiary's generally described employment fails to establish that the beneficiary possesses or has used in the performance of her employment, skills that qualify as or requisite specialized knowledge. Counsel argues that the beneficiary's training and experience have given her knowledge which is special because it is specific to the petitioning entity. However, logic dictates that on-the-job training at any company teaches primarily procedures that are predominately germane to that organization. The beneficiary's associate degree in industrial engineering notwithstanding, the record contains no detailed description of any specialized in-house training that the beneficiary received either from the organization or any institute of higher learning. Furthermore, in-house training, as such, does not automatically qualify as specialized knowledge as counsel would suggest.

Counsel contends that the director's decision treats "specialized knowledge" with undue restrictions. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge of the petitioner's product, processes, or procedures, as opposed to the skills required merely to use such products. Contrary to counsel's argument, mere familiarity with an organization's product or service does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that she has been and will be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the documentation presented raises the issue of whether there is a qualifying relationship between and U.S. entity and a foreign entity pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G). The record contains insufficient evidence that the United States entity and the foreign entity are owned and controlled by the same group of individuals in relatively equal parts. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.